



Final Regulation Agency Background Document

Agency name	Department of Mines, Minerals & Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-160
Regulation title	Virginia Gas and Oil Board Regulations
Action title	Amendments regarding the regulations of the Virginia Gas and Oil Board
Date this document prepared	April 21, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

As a result of periodic review, the Department of Mines, Minerals and Energy (DMME) and the Virginia Gas and Oil Board (VGOB) are amending the Virginia Gas & Oil Board Regulations. Sections within the regulation will be amended to enhance accuracy and clarity. The amendments will also aid the gas and oil industry and VGOB in the review and regulation of gas and oil permits by reducing workload and increasing efficiency in the permitting process. The regulation will be updated to include symbols that are consistent with current industry usage and available CAD technology. Two minor changes were made since publication of the proposed regulation. One is to clarify that the fee for filing pooling orders before the Board is due for each order. The second is to delete a requirement that resource owners in an area around a proposed well notify the Board "by certified mail" that they wish to receive a copy of the pooling application. Simple mail or phone notice will suffice.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On April 20, 2010, VGOB voted to adopt a final regulation entitled the Virginia Gas and Oil Board Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

DMME has the authority to promulgate regulations generally under § [45.1-161.3](#) The Virginia Gas and Oil Board has the authority to promulgate this regulation under § [45.1-361.15](#) of the Code of Virginia. The Board is not mandated to promulgate this regulation, but it is necessary to ensure the Board can meet its mandated authority to promote the safe and efficient exploration for, development, production, and utilization of gas and oil resources and protect the correlative rights of resource owners.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The existing regulation contains obsolete elements and imprecise language. The amendments to the regulation correct these flaws. Also, the permit application process will become more efficient for both applicants, DMME and its Division of Gas and Oil (DGO). The amendments are therefore necessary and serve to enhance the health, safety and welfare of citizens.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The amendments will ensure the language of the regulation reflects current industry usage and technology. For example, other agency regulations have updated references to the most recent 1983 version of the Virginia Coordinate System, rather than the obsolete 1927 version. Amendments to this chapter would no longer require the gas and oil industry to maintain its

current practice of converting its coordinates under the 1983 system back to the 1927 version. Thus, industry practice will become more efficient.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantages are an enhanced, clearer regulation more aligned with current industry practices and increased efficiency to industry and DMME. There are no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
4 VAC 25- 160-30 E 4	Parties subject to a Board order must notify DMME by certified mail that they wish to receive a copy of a pooling order application.	The requirement to notify DMME by certified mail has been eliminated. Simple mail or phone notice will suffice.	Parties owing property in the vicinity of a well subject to a Board pooling order should not be required to submit requests for information by certified mail. This is seen as an unnecessary hurdle to their participation in a hearing affecting their property rights.
4 VAC 25- 160-30 F	Applications for the establishment <u>and</u> <u>modification</u> of units, spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia.	Applications for the establishment <u>and modification</u> of [<u>a</u> units-], spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia	This minor clarification will more clearly reflect the original intent of the fee.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
<p>Catherine Jewell for herself and Juanita Sneeuwjagt for the Committee for Constitutional and Environmental Justice</p>	<p>“The Virginia Register posting on August 31, 2009, failed to include 4 VAC 25-160-80. Applications to pool interests in a drilling unit: conflicting claims to coalbed methane gas ownership through 4 VAC 25-160-130. Appeals of the director's decisions. Without these changes we can not comment on them please forward them to us, so that we can review them.”</p> <p>-----</p> <p>4 VAC 25-160-30 B Comment addresses operators compliance with the requirement to submit data prior to the Board hearing or for the Board to continue hearings if applications are not complete.</p> <p>-----</p> <p>4 VAC 25-160-30 E 2 Comment says a contractor working for an applicant should not be considered an authorized agent.</p> <p>-----</p> <p>4 VAC 25-160-30 E 4 All Exhibits should be included in the Application and received by all individuals required to be notified, with the exception of exhibits that are used to provide justification for the actual proposed operation. This has</p>	<p>Proposed changes to 4 VAC 25-160 appeared in the August 31, 2009, Virginia Register. No changes were proposed to 4 VAC 25-160-80 or 4 VAC 25-160-130, so these sections were not published and no comments were requested for these sections. DMME has advised Ms. Jewell of this. DMME will continue to accept comments on these or other sections at any time for use in future regulatory reviews.</p> <p>-----</p> <p>This comment addresses Board action at hearings and not provisions of the regulation. No regulation change is required.</p> <p>-----</p> <p>Under contract law, an applicant is free to designate who is authorized to file information on its behalf. The Board has no authority to direct the applicant or limit who is an authorized agent. The applicant is responsible to meet all regulatory requirements whoever is used as an authorized agent.</p> <p>-----</p> <p>The regulation requires the applicant to submit sufficient copies of the application to DMME so that copies will be available for review at the DMME office and for any person requesting that a copy be provided. Requiring that the applicant provide copies to all persons receiving notice may require</p>

been abused by the operators and used as an opportunity to provide critical information that should have been sent in the original application. Why should the individuals who are required to be notified have the burden of notifying the Division by certified mail that they will expected to be in attendance and request copies of the exhibits? This is contrary to the letter and spirit of the Act.

4 VAC 25-160-30 F

Change to "Application for the establishment and modification of a unit, spacing or pooling." The commenter suggested that the fee should be submitted for each unit to be modified, not one fee for multiple units. Additionally, the commenter believes that the fee is not adequate to cover the costs incurred by the State to publish notification of meetings, pay Board members and DGO and staff, set up escrow accounts and maintain them, nor to maintain these files.

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4 VAC 25-160-40

The commenter requests use of a standard form for notifying persons of a hearing before the board and that all pages in the application be original size.

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4 VAC 25-160-40 B 5

Commenter notes that other types of wells require permits.

copies be sent to over one hundred persons, many of which would not want a copy. This creates an unnecessary requirement as any party wishing to receive copies of the material can.

DMME agrees that resource or surface owners included under a pooling order should not be required to submit by certified mail a request to receive a copy of the application. Simple mail or voice notice will suffice.

The proposed regulation already included a change to clarify that the fee is due per unit. The fee is intended to cover costs of publishing notice of the application and Board hearing and preparing materials for the Board hearing. It is not intended to cover all Board support costs. DMME has sufficient budget available to cover the Board support costs under the new state biennial budget.

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Forms are filed with the Registrar of Regulations but are not required to be promulgated as a regulation. Therefore, no modification of the regulation is necessary in response to this comment. As for size of documents, the operator must submit one original plat at scale, but can submit reduced size copies. The one original plat ensures that the accuracy can be checked if needed.

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The Board does not have jurisdiction over coreholes so no notice of such is appropriate in the Board regulation.

	<p>----- 4 VAC 25-160-40 B 6 Change “The plat shall include property lines taken from (i) deed descriptions and chain of title, (ii) county courthouse records, (iii) AND/OR a physical survey with of each tract in the unit. Where the Board is informed that the property lines fail to agree with acreage used in county records for tax assessment purposes, It shall require that a physical survey be conducted by an independent firm at the expense of the unit operator.”</p> <p>Other states require tracts to be surveyed. The amount of the unit assigned to the royalty owners is based solely on what the operator has in the plats. The royalty owners will be paid according to the percentage of the unit assigned to him by the operator for the life of the well. You can not protect correlative rights when the acreage assigned is not accurate.</p> <p>It would be beneficial to the reviewer and well inspector, surface and mineral owners, and the Board to require more information on the well location plat. There is substantial difference between operators on the amount of information included on these plats. Some operators show only the proposed well location and tract boundaries within the unit, while others provide greater detail. The well location plat should, at a minimum, show all information.</p>	<p>----- The acreage shown on county or city tax records is not subject to jurisdiction by the Board. The Board has no authority to address the accuracy of county or city records. The Board regulation requires the acreage to be certified by a licensed land surveyor or licensed professional engineer to ensure accuracy of the information.</p> <p>As noted above, the Board regulation requires the acreage to be certified by a licensed land surveyor or licensed professional engineer to ensure accuracy.</p> <p>This information required to be shown on plats is needed to establish the acreage for each tract to be included in the Board order. Additional information is not needed on the plat for the Board to act, so nothing additional is required in this regulation. Note that the Board already has the authority to request additional information as needed and that additional requirements for plats, necessary for permitting wells, are set out in 4 VAC 25-150-90, 510, 590, and 680.</p>
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	<p>----- 4 VAC 25-160-40 B 6 The plat should include information on property 800 feet beyond the unit boundary.</p> <p>----- 4 VAC 25-160-40 B 9 and 10 9. Change to “An <u>accurate</u> estimates of the amount of reserves in the unit”. Add “The estimate should be based on actual testing or production data from units in the area and consider the expected life of the well.”</p> <p>10. Change to “An <u>accurate</u> estimate of the allowable costs...” Add “The estimate should be based on the actual costs of drilling similar wells”.</p> <p>----- 4 VAC 5-160-40 C Due diligence is a farce. The unknown/unlocated category has been greatly abused by operators – It seems that in some cases there are dozens of individuals listed in these applications as unknown/unlocated. Some that have property that continues into adjacent units where the same operator has managed to find them. Many of these individuals still reside in the area.</p> <p>----- 4 VAC 25-160-40 E Each well involving a conflicting claim, unleased party, or unknown owner should be pooled and should be tracked by the same pooling order.</p>	<p>----- A pooling order only addresses the activity in the unit to be pooled. Any issues addressing the area presumed to be drained around a well are addressed through field units. Therefore, no information on property outside the unit subject to an order is needed.</p> <p>----- All information submitted to the Board and Department is required to be accurate. Adding a notation for accuracy of data in one section and not in others would imply that the other sections do not need to meet the same level of accuracy.</p> <p>----- The language specifying that a “diligent search” be conducted is being added to reinforce the need for the applicant to locate all possible parties. This is being added to strengthen the standard for locating affected parties. This is consistent with the comment reflecting that searches should be complete.</p> <p>----- Each unit subject to Board action when there is a conflicting claim, unleased party, or unknown owner is assigned a unique number. Any request to modify that unit is assigned the same unit number with an extension showing that the order has been modified.</p>
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	<p>----- 4 VAC 25-160-40 F Notice should be given to all owners of gas in a unit when the operator changes its name or transfers ownership</p> <p>----- 4 VAC 25-160-50, 60 and 70 The commenter requested these sections should incorporate all changes in 4 VAC 25-160-40 in these sections.</p> <p>----- 4 VAC 25-160-60 Where did the DGO obtain the authority to grant exceptions to well spacing requirements (especially in the case of CBM wells)?</p> <p>----- 4 VAC 25-160-70 C The requirement to timely file supplemental orders is a joke and not enforced. Some supplemental orders are not filed for over a year past the deadlines of the elections.</p> <p>----- 4 VAC 25-160-200 A The requirements for an inclination survey are inconsistent with the requirements in 4 VAC 25-150-280 for logs and surveys. Have the inclination surveys ever been requested or produced for the Board?</p>	<p>----- Any person operating a well is required to register with DMME in accordance with the Code of Virginia § 45.1-361.37. There is no statutory requirement to notify others, so the Board cannot require such notice.</p> <p>----- The sections of the regulation addressing notice of hearings, applications for field rules, applications for exceptions to minimum spacing requirements, and applications to pool conventional units each stand alone. Any requirements under 4 VAC 25-160-40 that are applicable to the other sections are already included by reference. Therefore, there does not need to be any additional amendments to 4 VAC 25-160-50, 60, or 70 to incorporate the changes already made in 4 VAC 25-160-40.</p> <p>----- VGOB is granted this authority in § 45.1-361.17(B) of the Code of Virginia.</p> <p>----- The regulation is being amended to establish an unambiguous time for filing of supplemental orders. This is to strengthen the process and address the issues raised by the commenter.</p> <p>----- The Board requirements for an inclination survey are in place to ensure that a well is producing from the unit and has not been deviated to produce from a neighboring unit. The DMME requirements for logs and surveys are in place to address safety of wells penetrating coal seams. Their purposes differ, so requirements differ. The inclination surveys are filed with the</p>
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	<p>----- 4 VAC 25-160-200 B Royalty owners should be paid for all production and production records should be public. It is unclear why results of well flow potential tests should be kept proprietary.</p>	<p>department as part of the drilling logs so are available to the Board. ----- Well flow potential tests are completed prior to completing a well and connecting it to a pipeline or tank. It is completed as part of the process to determine whether a well is economical to produce. Such data is required to be kept confidential in accordance with § 45.1-361.6 of the Code of Virginia. There is no production at the time of this test, so there is no payment for production.</p>
<p>Jerry Grantham for the Virginia Oil & Gas Association</p>	<p>The Virginia Oil & Gas Association offers full support for the changes recommended by the Department of Mines, Minerals, & Energy's Division of Gas & Oil.</p>	<p>No reply needed.</p>
<p>Maurice Royster for EQT</p>	<p>EQT agrees with the Virginia Oil & Gas Association and offers full support for the changes recommended by the Department of Mines, Minerals, & Energy's Division of Gas & Oil.</p>	<p>No reply needed.</p>

No comments were filed on the Town Hall Internet site.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
4 VAC 25-160-10	N/A	"Applicant" or "petitioner" means a person who files an application, petition, appeal or other request for board action.	The definition is changed to include a business as an applicant. The definition is further amended to specify applicants are applying with the Division of Gas and Oil.

4 VAC 25-160- 10	N/A	The terms “Board”, “Division Director” and “Petitioner” are not defined in the current regulation.	These necessary, self-explanatory definitions are added.
4 VAC 25-160- 30 D.	N/A	The division shall assign a docket number to each application or petition at the time of filing, and shall notify the applicant of the docket number.	The amendment clarifies that a docket number shall not be assigned until the filing fee is paid, not when the application is filed. This ensures receipt of payment.
4 VAC 25-160- 30 D.1.a	N/A	“Before the Virginia Gas and Oil board.”	Board is capitalized.
4 VAC 25-160- 30 E.4.	N/A	Persons shall submit 10 sets of each application and exhibit.	The amended regulation reduces the number of copies to be submitted from 10 to 8. One copy is provided to each of the seven board members and one to the board’s representative from the Office of the Attorney General.
4 VAC 25-160- 30 E.4.	N/A	Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia and are expected to be in attendance at the hearing.	The amendment specifies that applicants must provide a sufficient number of copies of exhibits for those to whom notice is required to be given and have notified the division of their request for copies.
4 VAC 25-160- 30 F.	N/A	Applications for the establishment of units, spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia.	The amendment clarifies that the fee is applicable to modification of a unit.
4 VAC 25-160- 30-G	N/A	All parties in any proceeding before the board are entitled to appear in person or be represented by counsel or other qualified representative.....	The amendment deletes “or other qualified representative” to clarify that only a licensed attorney can represent a party before the board.
4 VAC 25-160- 40 B.6.a.	N/A	Use of latitude and longitude (the Virginia Coordinate System of	The amended regulation changes the requirements from the Virginia Coordinate System of 1927 to the

		1927).	Virginia Coordinate System of 1983 to conform to current industry standards.
4 VAC 25-160-40 B.6.a.	N/A	6. a. For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.</u> The plat containing the percentage of acreage in each tract shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;	The amended makes a technical correction and deletes the underlined text to conform to current industry standards.
4 VAC 25-160-50 A.5.c.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	The amended regulation changes the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983 to conform to current industry standards.

4 VAC 25-160- 50 A.5.c.	N/A	c. A description of the pool or pools included in the field, based on geological and technical data, including the boundaries of the pool or pools and field, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series;</u>	The amended makes a technical correction and deletes the underlined text to conform to current industry standards.
4 VAC 25-160- 40C	N/A	When the identity or location of any person....	The amended regulation adds “after a diligent search” after the word “When” to clarify what is required of applicants to attempt to locate parties to whom notice is required to be given.
4 VAC 25-160- 40.C.3	N/A		The amended language features minor grammatical changes.
4 VAC 25-160- 50 (11).	N/A	Citation: 4VAC25-160-40 C	The amendment changes an incorrect citation of "4VAC25-160-40 D" to "4VAC25-160-40 C".
4 VAC 25-160- 60 (7).	N/A	Citation: 4VAC25-160-40 C	The amendment changes an incorrect citation of "4VAC25-160-40 D" to "4VAC25-160-40 C".
4 VAC 25-160- 70 A.7.	N/A	Use of latitude and longitude (the Virginia Coordinate System of 1927).	The amended regulation changes the requirements from the Virginia Coordinate System of 1927 to the Virginia Coordinate System of 1983 to conform to current industry standards.

<p>4 VAC 25-160- 70 A.7.</p>	<p>N/A</p>	<p>7. A plat showing the size and shape of the proposed unit and boundaries of tracts within the unit, shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. <u>The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.</u> Also included shall be the names of owners of record of the tracts, and the percentage of acreage in each tract, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;</p>	<p>The amended makes a technical correction and deletes the underlined text to conform to current industry standards. The amended makes a technical correction and deletes the underlined text to conform to current industry standards.</p>
<p>4 VAC 25-160- 70 A.15.</p>	<p>N/A</p>	<p>Citation: 4VAC25-160-40 D</p>	<p>The amendment changes an incorrect citation of "4VAC25-160-40 D" to "4VAC25-160-40 C".</p>
<p>4 VAC 25-160- 70 C.</p>	<p>N/A</p>	<p>C. After the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any</p>	<p>The amendment inserts "Within 45 days" instead of "After" at the beginning of the sentence for clarification.</p>

		elections were made.	
4 VAC 25-160- 130 A B & C	N/A	Section describing the appeals process	The amended language clarifies that it is the decisions of the DGO's director that can be appealed as opposed to DMME's director.
4 VAC 25-160- 190	N/A	Section describing civil charges	The amended language clarifies that DGO's director may recommended a civil charge against a gas operator as opposed to DMME's director.
4 VAC 25-160- 200 B.3.	N/A	Citation: "Manual of Back-Pressure Testing of Gas Wells," 1979	The amended language reflects the more recent version of the manual.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No other alternative would meet the purposes of the proposed regulatory action. The action clarifies and updates regulatory language which will result in more efficient reporting from industry. The proposed action will have no impact on small businesses.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation will have no impact on the institution of the family or family stability.